

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

TROY OROSCO, INDIVIDUALLY AND
ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED

v.

CHALK MOUNTAIN SERVICES OF
TEXAS, LLC

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CIVIL NO. SA-17-CA-00682-XR

JOINT FED. R. CIV. P. 26 REPORT

1. Are there any outstanding jurisdictional issues? **No.** For removed cases based on diversity jurisdiction, do the parties agree that the amount in controversy exceeded \$75,000 at the time of removal? **N/A.** If not, each party should state its position on the amount in controversy.
2. Are there any unserved parties? **No.** If more than 90 days have passed since the filing of the Complaint or petition, should these unserved parties be dismissed? **N/A**
3. What are the causes of action, defenses, and counterclaims in this case? **Plaintiff has pleaded a hybrid Rule 23/Section 216(b) class and collective action alleging he and others were improperly classified as exempt and therefore improperly denied overtime.** What are the elements of the cause(s) of action, defenses, and counterclaims pled? **Plaintiff claims he and others were misclassified as exempt and therefore denied overtime. Defendant denies these allegations, and contends Plaintiffs were properly classified as exempt.**
4. Are there any agreements or stipulations that can be made about any facts in this case or any element in the cause(s) of action?

Parties stipulate to the following:

- a. **Defendant is an employer under the FLSA and Plaintiff and the Putative Class Members are/were Defendant's employees.**
 - b. **FLSA enterprise and individual coverage applies in this case.**
 - c. **Defendant paid all Sand Coordinators, Pushers and Well Site Supervisors as salaried, exempt employees.**
5. State the parties' views and proposals on all items identified in Fed. R. Civ. P. 26(f)(3).
- A. Changes to timing of disclosures under Rule 26(a): **The parties will make such disclosures by October 1, 2017.**
 - B. Subjects on which discovery may be needed, when discovery should be completed, and whether it should be in phases: **Discovery will be needed on Plaintiff and the putative class members' job duties and hours of work. At this time, the parties have agreed to postpone certification issues – it is possible there may need to be discovery in phases. Discovery should be completed by August 30, 2018.**
 - C. Issues about discovery of ESI: **None.**
 - D. Issues about claims of privilege or protection: **None at this time.**
 - E. Changes on limitations on discovery: **Defendant may seek relief from the 10 depositions limit under Rule 30 based on any ruling on certification and the number of opt-ins. Plaintiff will oppose Defendant's request if necessary.**
 - F. Any other orders the Court should issue: **The parties will propose a confidentiality order to handle production of confidential materials.**
6. What, if any, discovery has been completed? **None.** What discovery remains to be done? **All.** Have the parties considered conducting discovery in phases? **Yes, depending on how early settlement discussions progress.**

7. What, if any, discovery disputes exist? **None.**
8. Have the parties discussed the desirability of filing a proposed order pursuant to Federal Rule of Evidence 502? **Yes.**
9. Have the parties discussed mediation? **Yes, but the parties want to try informal discussions first.**

AGREED AND/OR ACKNOWLEDGED:

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